PRIVATE SECURITIES LITIGATION/5-2 Statute of Limitations

SUBJECT: **Private Securities Litigation Reform Act of 1995 . . . S. 240. D'Amato motion to table the Bryan amendment No. 1469.**

ACTION: MOTION TO TABLE AGREED TO, 52-41

SYNOPSIS: As reported with an amendment in the nature of a substitute, S. 240, the Private Securities Litigation Reform Act, will enact changes to current private securities litigation practices in order to discourage unjust suits and to provide better information and protection from fraud for investors.

The Bryan amendment would increase the statute of limitations for bringing a securities cause of action to the earlier of 5 years after the alleged violation or 2 years after the discovery of the alleged violation. No requirement would be imposed on the defendant to exercise reasonable diligence. (The current limit of the earlier of 3 years from the alleged violation or 1 year from its discovery was set by the Supreme Court in the 1991 *Lampf* v. *Gilbertson* decision.)

Debate was limited by unanimous consent. Following debate, Senator D'Amato moved to table the Bryan amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

In 1991 the Supreme Court ruled that the 1-year and 3-year statute of limitations is rooted in common law and should be the uniform limit. The bill will simply leave this decision intact. Those Senators who claim that this limit will preclude the filing of meritorious suits are ignoring the previous 4 years. The number of filings has remained roughly the same, and our colleagues are unable to show us cases where legitimate suits have been blocked because of the limitations. Further, our colleagues are ignoring the fact that no statute of limitations will apply to the Securities and Exchange Commission (SEC). Some of the largest settlements that have been reached in securities cases have been reached by the SEC long after the statute of limitations on private actions had expired. For example, SEC prosecution brought $400 million in disgorgement in the Drexel-Burnham-Lambert case. This money

(See other side)

YEAS (52)

Republicans (45 or 88%)		Democrats (7 or 17%)
Abraham	Hatfield	Baucus
Ashcroft	Helms	Bumpers
Bennett	Hutchison	Exon
Brown	Inhofe	Feinstein
Burns	Jeffords	Murray
Campbell	Kassebaum	Pryor
Chafee	Kempthorne	Robb
Coats	Kyl	
Cochran	Lott	
Coverdell	Lugar	
Craig	Mack	
D'Amato	McConnell	
DeWine	Nickles	
Dole	Packwood	
Domenici	Pressler	
Faircloth	Simpson	
Frist	Smith	
Gorton	Snowe	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thompson	
Hatch	Thurmond	
	Warner	

NAYS (41)

Republicans (6 or 12%)	Democrats (35 or 83%)	
Cohen	Akaka	Heflin
McCain	Biden	Hollings
Murkowski	Bingaman	Inouye
Roth	Boxer	Johnston
Shelby	Bradley	Kennedy
Specter	Breaux	Kerrey
	Bryan	Kerry
	Byrd	Kohl
	Conrad	Lautenberg
	Daschle	Leahy
	Dodd	Levin
	Dorgan	Lieberman
	Feingold	Mikulski
	Ford	Nunn
	Glenn	Reid
	Graham	Rockefeller
	Harkin	Sarbanes
		Wellstone

NOT VOTING (6)

Republicans (2)	Democrats (4)
Gramm-[2]	Moseley-Braun-[2AY]
Santorum-[2]	Moynihan-[2]
	Pell-[1AN]
	Simon-[2]

VOTING PRESENT(1)
Bond

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

went back to the investors who were defrauded. These investors did much better than they would have if they had been represented by some of the disreputable lawyers who file class action lawsuits, and quickly settle for huge legal fees for themselves and pennies on the dollar for shareholders. The SEC does not merely seek penalties and prison terms, as our colleagues have falsely suggested; they seek redress for investors as well. While shorter limits have not limited redress in practice, and while SEC action is always available without any statute of limitations, there is good reason for not having a long limit or no limit for private rights of action. If there is not any limit, investors may buy stocks or bonds and then wait 2 years, 3 years, or more to see if the value goes up or down. If the value goes up, then they obviously do not sue. If the value drops, then they allege fraud. It is more difficult to defend against fraud over a longer time period because all the documents and statements of a company over that longer time period must be produced and defended. The coercive nature of frivolous lawsuits is thus compounded by the length of time that passes from when the fraud allegedly occurred. Finally, longer statutes of limitations can be used like a sword of Damocles by lawyers in their efforts to blackmail companies with unjust suits. Instead of filing, they can continually threaten to file as they negotiate a pay-off amount for them not to file their frivolous suits. In summary, plaintiffs do not need a longer statute of limitations than is provided in the bill to have their legitimate claims defended, and passing a longer limit as proposed in the Bryan amendment would invite further abusive litigation. Therefore, we urge the tabling of this amendment.

Those opposing the motion to table contended:

The Bryan amendment would have a 2-year/5-year statute of limitations instead of the more stringent 1-year/3-year limit. In proposing this longer limit, the Bryan amendment is simply matching the limit that is in the underlying bill. We know that 50 of our colleagues cosponsored the underlying bill, and we know that many Senators who did not cosponsor it are supportive of this longer limit. Therefore, we are hopeful that a strong majority of Senators will support this amendment.

A longer limit makes sense. Elaborate, fraudulent securities schemes are very difficult to detect. It sometimes takes years before it becomes apparent that fraud has occurred. According to SEC Chairman Levitt, it takes the SEC an average of 2.25 years to investigate a case to determine if fraud has taken place. This length of time is obviously beyond the 1-3 limit. If even the SEC, with all its expertise, takes this long to investigate a case, then it is unreasonable to expect private investors to be able to act with greater dispatch.

This issue is not partisan. The SEC Chairman under President Bush, Mr. Breeden, also thought the 1-3 limit was too short. He even spoke against the 2-5 limit, noting that it would have prevented recovery partially or totally in a number of the largest securities fraud cases that have ever been prosecuted in the country, including the entire check-kiting case against E. F. Hutton. Fraudulent actions that are especially difficult to detect, such as municipal bond fraud in which interest payments are typically held in escrow for years, would be virtually unactionable by private parties under a restrictive 1-3 statute of limitations.

While it is true that no statute applies to the SEC, it is also true that SEC actions seek fines and sanctions, not recovery of losses. Disgorgement may sometimes be sought, but only of illegal gains; in contrast, a private party suit may go after all the assets of a company. Investors can clearly get more money through private party suits than through SEC action. Additionally, according to former-Chairman Breeden, the SEC would have to hire hundreds of new employees if it were to prosecute all the cases that were to arise outside of a 1-3 statute of limitations. We doubt that in this budget climate that SEC employment will increase; therefore, this statute of limitations is going to allow perpetrators of fraud to escape punishment.

The SEC, the State Securities Association, the State Financial Officers, and the Local Government Financial Officers all support the Bryan amendment. These organizations are responsible for policing the securities industry--their interest is not pecuniary, it is good government. We urge our colleagues to accept their expert opinion, and to vote in favor of the Bryan amendment.